



August 2023

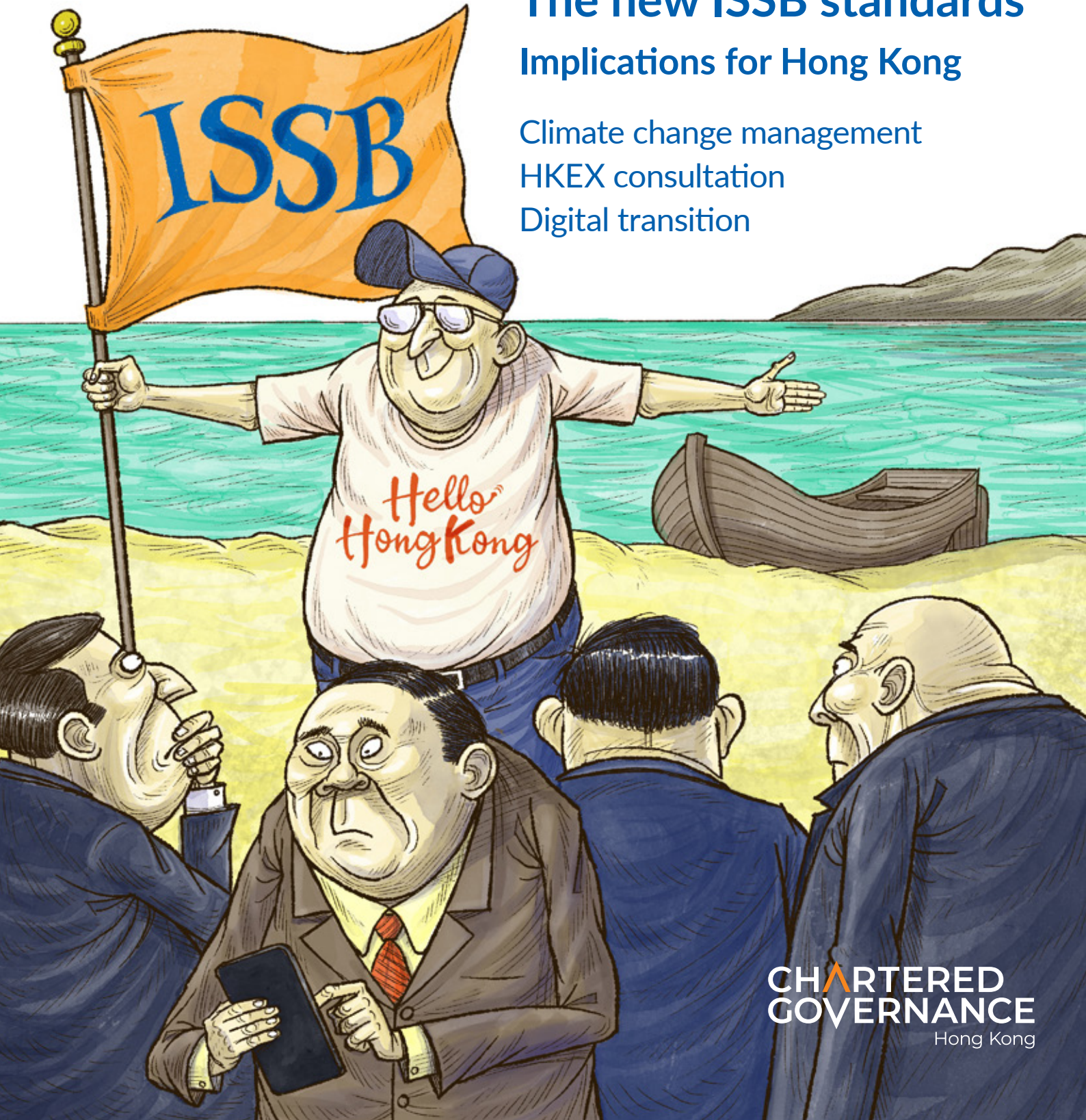
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卓越治理 更佳未來

The journal of the Hong Kong  
Chartered Governance Institute  
香港公司治理公會會刊

## The new ISSB standards Implications for Hong Kong

Climate change management  
HKEX consultation  
Digital transition





# Digital transformation of governance is the new business imperative

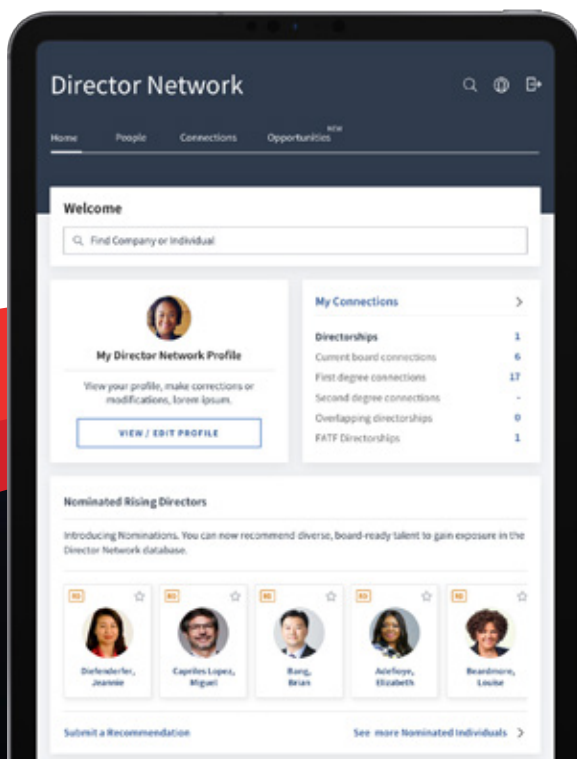
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# Calling for Nominations of HKCGI Prize 2023



**2022**  
**Samantha Suen**  
**FCG HKFCG**  
Past President and Former Chief Executive,  
HKCGI



**2021**  
**April Chan**  
**FCG HKFCG**  
Past President and  
Chairman of Technical  
Consultation Panel,  
HKCGI



**2020**  
**Ada Chung**  
**FCG HKFCG**  
Privacy Commissioner  
for Personal Data



**2019**  
**Edith Shih**  
**FCG(CS, CGP)**  
**HKFCG(CS, CGP)(PE)**  
Past International  
President, CGI; Past  
President, HKCGI;  
Executive Director and  
Company Secretary,  
CK Hutchison  
Holdings Ltd



**2018**  
**Peter Greenwood**  
**FCG HKFCG**  
Former HKCGI  
Representative to  
CGI Council



**2017**  
**Natalia Seng**  
**FCG HKFCG**  
Past President,  
HKCGI



**2016**  
**Gordon Jones**  
**BBS FCG HKFCG**  
Former Registrar of  
Companies



**2015**  
**Anthony Rogers**  
**GBS QC JP FCG HKFCG**  
Former Vice-President  
of the Court of Appeal  
of Hong Kong



**2014**  
**Neil McNamara**  
**FCG HKFCG**  
Past President,  
HKCGI



**2013**  
**Edwin Ing**  
**FCG HKFCG**  
Past President,  
HKCGI



**2012**  
**John Brewer**  
Past Chairman,  
The Association of the  
Institute of Chartered  
Secretaries and  
Administrators in  
Hong Kong



**2011**  
**Duffy Wong**  
**BBS JP FCG HKFCG**  
Past Chairman,  
The Association  
of the Institute of  
Chartered Secretaries  
and Administrators in  
Hong Kong



**2010**  
**Mike Scales**  
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(Prize Awardees from 2010 to 2022)

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## August 2023

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### Good governance comes with membership

About The Hong Kong Chartered Governance Institute

The Hong Kong Chartered Governance Institute (HKCGI, the Institute) is an independent professional body dedicated to the promotion of its members' role in the formulation and effective implementation of good governance policies, as well as the development of the profession of the Chartered Secretary and Chartered Governance Professional in Hong Kong and the mainland of China (the Mainland).

The Institute was first established in 1949 as an association of Hong Kong members of The Chartered Governance Institute (CGI). In 1994 the Institute became CGI's Hong Kong Division and, since 2005, has been CGI's Hong Kong/China Division.

The Institute is a founder member of Corporate Secretaries International Association Ltd (CSIA), which was established in March 2010 in Geneva, Switzerland. Relocated to Hong Kong in 2017, where it operates as a company limited by guarantee, CSIA aims to give a global voice to corporate secretaries and governance professionals.

HKCGI has over 6,800 members, more than 300 graduates and around 3,000 students.

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This issue of your journal examines recent proposals from Hong Kong Exchanges and Clearing Ltd (HKEX) updating the ESG Reporting Guide to the ESG Reporting Code with tighter disclosure requirements for climate-related information. This follows the work of the International Sustainability Standards Board (ISSB), which is pushing for global baseline standards for sustainability and climate-related disclosures to address the concerns of investors and other capital providers.

The current ESG Reporting Guide is founded on the notion that companies should disclose how material ESG issues affect their operations and vice versa (a twofold or 'double materiality' approach). At the same time, ISSB is developing standards that only call for reporting material ESG concerns on a company's enterprise value so that investors and other capital providers can have coherent and comparable information to make their decisions (a 'single materiality' approach). This is expected to provide more quantitative financial information to investors to make investment decisions. The governance professional should know this difference in materiality assessment and ensure proper reporting of climate change disclosures.

## Up to standard

Returning to the background, in June 2023, the ISSB released its general sustainability-related financial information (IFRS S1) and climate-related disclosures (IFRS S2) standards (collectively the Standards). Attracting investors is crucial to Hong Kong's status as a leading international financial centre; hence HKEX suggests the current reform. However, HKEX aims to align with the Standards rather than adopt them.

The cover article of this edition explains that this is based on HKEX's assessment of what Hong Kong-listed issuers may be able to comply with. It highlights that adopting IFRS S1's requirements and whether more than the IFRS S2's baseline on climate-related disclosures will be required are attracting market attention. HKEX will no doubt consider these and other issues under its consultation conclusions, which are to be published. In the meantime, the Institute is collaborating with HKEX on promoting the new requirements and is grateful to HKEX's venue sponsorship of the HKEX Connect Hall for a seminar on climate-related disclosures to be held in September.

HKEX plans for the new Listing Rules to go into effect on 1 January 2024, subject to the consultation outcomes. For the first two reporting years following that date, interim provisions will apply to requirements that are thought to be particularly onerous, including the requirement to disclose Scope 3 greenhouse gas emissions. However, the message for journal readers is the

need to prepare for Hong Kong's new requirements urgently.

I would add that the end goal is not compliance. In addition to examining internal processes and implementing any necessary measures to comply with the updated regulations, listed companies can significantly benefit in how they operate by ensuring that the board of directors shape their strategy, and regularly and effectively oversee these matters based on investor concerns.

I also want to draw attention to a recent Institute report, *Upping the Game*, published in June of this year. As a thought leader for the governance profession, our Institute closely monitors how stakeholder expectations and the changing environment affect the roles of governance professionals in Hong Kong and the Mainland. In this vein, the Technical Consultation Panel of the Institute worked together to create the Report with three academics from Hong Kong and the UK, with the Institute Chief Executive as contributing editor.

I strongly encourage you to read this Report, available on our website and discussed in this month's first In Focus piece. It offers a helpful and relevant introduction to opportunities and challenges that will determine our profession's direction.

Ernest Lee FCG HKFCG(PE)



# 遵守准则

本月会刊探讨了香港交易所最近提出的建议，即将《环境、社会和管治报告指引》提升为《环境、社会和管治报告守则》，以加强气候相关信息的披露要求。这是香港交易所继国际可持续发展准则理事会(ISSB)提出相关建议之后所采取的举措，ISSB正在推动制定可持续发展和气候相关信息披露的全球基准准则，以应对投资者和其他资本提供者的关注。

目前的《环境、社会和管治报告指引》基于这样一种理念，即，公司应披露重大环境、社会和管治(ESG)问题如何影响其运营，反之亦然("双重重要性"方法)。与此同时，ISSB正在制定准则，拟只要求报告重大ESG问题对企业价值的影响，以便投资者和其他资本提供者能够获得连贯、可比的信息，从而做出决策("单一重要性"方法)。预计这将为投资者做出投资决策提供更多量化的财务信息。治理专业人士应该了解重要性评估的这种差异，并确保恰当的准备气候变化披露报告。

关于背景，ISSB于2023年6月发布了《国际财务报告可持续披露准则第1号——可持续相关财务信息披露一般要求》(简称"IFRS S1")和《国际财务报告可持续披露准则第2号——气候

相关披露》(简称"IFRS S2") (统称"准则")。香港交易所认为目前建议的改革对吸引投资者维持香港作为主要国际金融中心的地位至关重要。不过，香港交易所的目标是与准则保持一致，而非采用准则。

正如封面文章所述，这是基于香港交易所对香港上市发行人遵守这些准则的能力的评估。文章指出，是否采用IFRS S1的要求以及是否有需要超出IFRS S2的气候相关披露基准正在引起市场关注。毫无疑问，香港交易所将在其即将公布的咨询结论中考虑这些及其他问题。与此同时，公会正与香港交易所合作推广新要求。特别感谢香港交易所为公会将于九月举办的气候相关信息披露研讨会提供场地赞助。

香港交易所计划新修订的《上市规则》拟于2024年1月1日生效，但需视咨询结果而定。在该日期之后的头两个报告年度，暂行规定将适用于被认为特别苛刻的要求，包括披露范围3温室气体排放的要求。不过，本刊读者需要留意的是，我们必须抓紧时间将为将在香港实行的新要求做好准备。

本人要补充的是，公司的最终目标并不是合规。除了检查内部流程和采取必要措施以遵守最新法规外，上市公

司还可以通过确保董事会制定战略，并根据投资者的关切定期有效地监督这些事项，从而使其在企业运营中受益匪浅。

本人还想提请大家留意公会于今年6月发布的一份报告《专业升级》。作为治理专业的思想引领者，公会密切关注利益相关者的期望和不断变化的环境如何影响香港和内地治理专业人士的角色。为此，公会的专业知识咨询小组与三位来自香港和英国的学者合作撰写了这份报告，并由公会总裁担任特约编辑。

本人强烈建议大家阅读这份报告，该报告可于公会网站查阅，并于本月的第一篇"焦点(In Focus)"文章中进行了解读。该报告对决定我们行业发展方向的机遇和挑战进行了相关有益阐述。



李俊豪先生 FCG HKFCG(PE)



# The new ISSB standards – implications for Hong Kong







CGj assesses whether the much-anticipated sustainability disclosure standards issued by the International Sustainability Standards Board (ISSB) in June this year will be the game-changer they aim to be, and what impact their launch will have on companies in Hong Kong.

Companies, not just in Hong Kong but globally, have been grappling with multiple sets of standards and frameworks on sustainability disclosures and there has been a growing demand to have better aligned standards with specific focus on climate change disclosures. On 26 June 2023, the ISSB issued its finalised global Sustainability Disclosure Standards – IFRS S1 and IFRS S2 (the Standards), but will the new Standards provide the intended convergence of disclosure practices globally and what impact will their launch have on companies in Hong Kong?

‘For companies starting out on sustainability reporting,’ says Tina Chang, Sustainable Investing Associate Director, Fidelity International, ‘the new Standards will be an opportunity

to shortcut the noise. Companies can now base their learning curve on the IFRS’s S1 and S2.’

#### First up – what are the Standards?

The ISSB is the independent standard-setting body set up by the IFRS Foundation. It was formally launched on 3 November 2021, at COP26 in Glasgow. As part of its mandate, the ISSB developed two IFRS sustainability disclosure standards as a comprehensive global baseline of sustainability disclosures focused on the needs of investors and financial markets.

1. IFRS Standard 1 (S1) – General Requirements for Disclosure of Sustainability-related Financial Information. This requires disclosure about sustainability-

### Highlights

- the world was badly in need of a global baseline for sustainability disclosures – the presence of multiple sets of standards and frameworks was only increasing the potential for confusion and greenwashing
- the goal of the Standards is to encourage companies to meet the strong demand from investors for consistent and comparable sustainability-related data and information
- the alignment of Hong Kong’s ESG regime with the ISSB standards will have significant implications for listed companies and the governance professionals advising them

“  
**The new Standards will be an opportunity to shortcut the noise. Companies can now base their learning curve on the IFRS’s S1 and S2.**  
 ”

**Tina Chang, Sustainable Investing Associate Director, Fidelity International**

related risks and opportunities that could reasonably be expected to affect an issuer’s cash flows, access to finance or cost of capital over the short, medium, or long term.

2. IFRS Standard 2 (S2) – Climate-related Disclosures.

This incorporates the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) and requires disclosure of material information about an issuer’s climate-related risks and opportunities that could reasonably be expected to affect an issuer’s cash flows, access to finance or cost of capital over the short, medium or long term. The four pillars are:

- **governance:** the governance processes, controls and procedures used to monitor and manage climate-related risk and opportunities
- **strategy:** which climate-related risks/opportunities could enhance strategy; what management information is provided on them; current and anticipated effects on the business model; those risks/opportunities that could be

reasonably expected to affect cash flows; access to finance and cost of capital in the short/medium/long term and resilience of strategy to climate risk

- **risk management:** how climate-related risks and opportunities are identified, assessed and mitigated, and
- **metrics and targets:** metrics and targets used to monitor performance.

The Standards were drafted to work in conjunction with IFRS accounting standards. They are designed to ensure that companies provide sustainability-related information alongside financial statements in the same reporting package. The Standards have four key objectives:

1. to develop standards for a global baseline of sustainability disclosures
2. to meet the information needs of investors
3. to enable companies to provide comprehensive sustainability information to global capital markets, and

4. to facilitate interoperability with disclosures that are jurisdiction-specific and/or aimed at a broader stakeholder group.

**How will the new Standards impact companies in Hong Kong?**

The ISSB standards have received significant support from investors, regulators, governments, companies and other capital market participants. Moreover, the alignment of Hong Kong’s ESG regime with the Standards will have significant implications for listed companies and the governance professionals advising them.

Hong Kong’s current ESG rules and regulations are contained within the ESG Reporting Guide (Appendix 27 of the Main Board Listing Rules and Appendix 20 of the GEM Rules). In April this year, Hong Kong Exchanges and Clearing Ltd (HKEX) launched a consultation (Enhancement of Climate-related Disclosures under the ESG Framework) proposing, among other things, to rename the ESG Reporting Guide the ESG Reporting Code (Code). The consultation also proposed a significant upgrading of the current requirements relating to climate-related disclosure to align Hong Kong’s regime with the new IFRS S2 Standard.

Dr Agnes KY Tai, Chief EC.ESG Investment Strategist at BlueOnion, points out that S1 has already largely been embedded in Appendix 27 as Hong Kong has been aligning with the TCFD approach for some time. Wai-Shin Chan, Global Head of ESG Research at HSBC, agrees. He points out that S1 serves as a governance framework for how sustainability should be done, and



most jurisdictions, including Hong Kong, align with it generally.

The HKEX consultation closely follows S2, summarising key points and replicating some of the language, but there are differences. 'The key phrase here', emphasises Mr Chan, 'is align, not adopt'. Hong Kong was one of the first jurisdictions to announce that it would align with the ISSB standards, he says, however there is also the need to tailor the disclosure requirements to the Hong Kong markets.

The HKEX consultation proposals relating to S2 would represent no small change to the current regulatory requirements. For example, listed companies would be required to disclose:

- their Scope 3 greenhouse gas (GHG) emissions
- the resilience of their strategy and operations to climate-related changes assessed by means of scenario analysis
- the capital deployed to address climate risks and opportunities, and
- their executive pay policies linked to climate considerations.

'The big challenge for Hong Kong corporates abiding by Appendix 27,' says Ms Chang, 'is its uniform expectation on all listed companies regarding climate. While under the new ISSB standards, one first identifies material topics under S1 and then refers to S2 when climate is

considered material, under the HKEX consultation proposals, many aspects of S2 focusing on climate would become a mandatory requirement for all listed companies in Hong Kong. This could be challenging for companies with other pressing ESG material issues, such as human rights, in terms of how to prioritise and allocate resources to climate disclosures versus other topics.

#### What will be the key compliance challenges?

##### Disclosing Scope 3 GHG emissions

The requirement for listed companies to disclose their Scope 3 GHG emissions will require them to quickly work with their supply chains to gather data and get both suppliers and customers on board. Dr Tai points out that this will be difficult enough for the larger listed companies, and for many listed SMEs it will be a significant challenge. Most of the 2,600 listed companies in Hong Kong are SMEs, and Dr Tai emphasises the value of training and of guidance for these companies going forward.

Nevertheless, the specific emissions disclosure requirements in Hong Kong are not as comprehensive as those of S2. Ms Chang points out that S2 sets out more detailed requirements relating to GHG emissions disclosure. For example, companies need to specify whether they are using carbon offsets and whether the disclosed emissions data has been verified by third parties. These disclosures are only required for target-setting but not for current GHG emission disclosures despite the fact that investors, Ms Chang points out, are looking for this type of data.

'When we look at emissions data, we need adequate background information in order for us to understand the nuances and come to useful conclusions. The more information we get about how the numbers have been calculated, the less time we spend on fact finding during engagement and focus on strategy discussion,' she says.

The Hong Kong proposals also factor in a longer interim period for Scope 3 disclosures. The one-year interim period suggested by ISSB has been extended to two years from January 2024 – the date the revised Appendix 27 goes into effect. In effect, Mr Chan points out, the interim period is greater than two years since companies will need to ensure their corporate reports published in 2027 (covering fiscal year 2026) are fully compliant. He adds that this will give companies time to address capacity constraints.

##### Using climate scenario analysis

The proposed Hong Kong requirements relating to disclosures of companies' resilience to climate-related changes assessed by means of scenario analysis are broadly aligned with S2. The HKEX consultation has adopted S2's approach and will provide a two-year interim period for companies to provide such disclosures commensurate with their resources.

Dr Tai points out that 'quantifying physical and transition risks is a tall order for less resourced companies'. She adds that it will be very much up to each individual company to decide which tools or service providers they should use to get up to speed.

“  
no standard is perfect,  
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this should ultimately  
minimise the potential  
for greenwashing  
”

Wai-Shin Chan, Global Head of ESG  
Research, HSBC

#### Providing quantitative data on the financial effects of climate change

The ISSB recognises the challenges for companies of providing quantitative data on the current or anticipated financial effects of a climate-related risk or opportunity. Under S2, an entity need not provide such data if it determines that:

- those effects are not separately identifiable, or
- the level of measurement uncertainty involved in estimating those effects is so high that the resulting quantitative information would not be useful.

Ms Chang points out that this safety valve – offering companies struggling to quantify the financial impacts of climate change a degree of flexibility – is lacking in the proposed HKEX requirements. Bearing in mind that HKEX’s consultation and proposals were published before the final ISSB standards, which contained material changes from the draft standards, HKEX needs to consider and align

the ESG Reporting Code with the material changes under the published standards.

#### Assessing materiality

Ms Chang points out that, in defining materiality, the Standards make reference to stewardship or voting activities. In essence, ‘information that can affect voting behaviour can also be considered material under S1 and S2’, she explains. This may seem to be a minor point, but companies would do well to bear in mind, she suggests, that there could be topics that should be considered material, not because of immediate direct financial impact but because such issues matter to the users of their reports. Just one isolated incident could cause reputational risks which could affect voting even though the incident itself may not be financially material in the short-term, she says.

#### Disclosing a company’s internal carbon price

The Standards require the disclosure of a company’s internal carbon price, while the HKEX consultation would only require companies that have an internal carbon price to disclose it. Dr Tai highlights the difficulties with this approach. The rules would effectively mean that companies with a carbon price would be subject to greater scrutiny. Will they therefore disincentivise companies from having an internal carbon price – arguably an important part of responsible ESG management? Moreover, a company may have reasons, for example wanting to withhold competitor-sensitive data, not to reveal publicly its internal carbon price. Dr Tai emphasises the importance of making the rules clearer.

‘If it is mandatory, make disclosures mandatory, and if voluntary, then make this clear too,’ she says.

#### Getting assurance of sustainability disclosures

Assurance of sustainability information is still at a relatively early stage of development in Hong Kong. The current Listing Rules, for example, only require disclosure where assurance of ESG disclosures has been obtained. This is in contrast to the position taken by the EU and Singapore. Neither ISSB nor the HKEX consultation requires assurance.

Mr Chan notes, however, that with the passage of time, in the usual way with disclosure regimes, the rules may move from voluntarily to ‘comply or explain’ and even to a mandatory requirement. Ms Chang adds that during this evolution all parties, companies and investors included, will benefit from more guidance on how assurance works with sustainability disclosures in practice.

#### Finally – will the ISSB standards be a game-changer?

There can be little doubt that the world was badly in need of a global baseline for sustainability disclosures – the presence of multiple sets of standards and frameworks was only increasing the potential for confusion and greenwashing. Nevertheless, the Standards are voluntary and regulatory requirements in jurisdictions around the world still vary. This may significantly hamper their ability to deliver on the goal of achieving global consistency and comparability in sustainability disclosures.



So has the hype regarding the potential impact of the Standards been misleading? 'No standard is perfect,' says Mr Chan, 'but as more companies align with the Standards, this should ultimately minimise the potential for greenwashing.'

He adds that the Standards will have the benefit of encouraging companies to consider more deeply the way they collect ESG information. He points out that the idea behind upgrading the disclosure requirements in Hong Kong is not only to provide information to investors but also to enable the reporting companies themselves to be better able to make informed climate-related decisions. In particular, companies need to be aware of the carbon intensity of their business activities, whether upstream or downstream, in order to make better decisions for the future.

Perhaps there needs to be a degree of realism, then, when considering the potential impact of the Standards. Their goal is to encourage companies to meet the strong demand from investors for consistent and comparable sustainability-related data and information. They are not going to ensure that companies are more sustainable overnight and they have come in for criticism for their single materiality approach (focusing on the financial impact of climate change on companies rather than also reporting on the company's impact on the environment). This is in contrast, for example, to the approach taken in the EU where proposed rules on ESG disclosure take a double materiality approach on the basis that, to many stakeholders,

## Disclosing the role of the board

In general, as the main article demonstrates, Hong Kong intends to propose alignment with IFRS S2 on climate disclosures. Regulators in Hong Kong have been proactive in enforcing board responsibility and accountability in addressing climate risks disclosures and has no doubt informed the market of the approach taken to this issue.

The Standards make reference to which individuals on the board have oversight of these matters, points out Mr Chan, but in Hong Kong the rules require more specific information on what the board is doing, not just who has oversight. 'This is a subtle, but relevant difference,' he says.

Moreover, while S1 only refers to the need to disclose companies' governance frameworks, Appendix 27 makes direct reference to the role of the board as well as management. It is expected that HKEX will provide more clarity on S1's application, which has not been formally adopted under the reform.

This is of course also an issue of particular interest to investors. Ms Chang points out that investors are looking to understand the value the board brings in providing oversight to companies on climate strategy and its competence in acting as a check and balance mechanism. She adds that it is important for companies to go beyond general statements and address the key questions.

Dr Tai adds that director training will be key to companies getting an effective governance framework for climate issues. She believes Hong Kong should make it mandatory for board directors to be educated on ESG issues and disclosures, pointing out that this is the case in Singapore and Malaysia. In Hong Kong, even general CPD training is not mandatory for board directors. There is guidance on best practice, but she points out that that is not the same as compulsory training in sustainability and climate-related disclosures.

the impact of companies on the environment is the primary concern. The current reform will result in Hong Kong's disclosure requirements being based on traditional matters for the pre-reform items that the market is familiar with, but single materiality for post-reform items. There are also more standards to come, for example, relating to biodiversity.

Nevertheless, if the reform encourages companies to report on sustainability issues in a more

consistent and transparent way, this is already a significant achievement. The ultimate focus of the IFRS, Mr Chan points out, in contrast to the broader approach of the European markets, is on financial disclosure with materiality made clear from the outset. 'This is where the ISSB standards come in', he says, 'as best practice global disclosure standards and companies need to be prepared for this.'

**Sharan Gill**  
Associate Editor, CGJ

# Strengthening cybersecurity: why government legislation is imperative



Michael Gazeley, Founder and Managing Director, Network Box Corporation, argues that government legislation in the realm of cybersecurity has become an urgent and critical necessity.

In today's hyper-connected world, where technology has become an integral part of our everyday lives, the need for robust cybersecurity measures cannot be overstated. From our omnipresent mobile phones, to our laptops and desktops, to smart devices such as CCTVs, refrigerators and webcam-equipped televisions, which rule our day-to-day existence, everything is an internet connected computer now. With cyber threats constantly evolving, posing significant risks to individuals, businesses and even national security, it is critical for governments to enact legislation to tackle these issues head-on.

Given the objective failure of organisations to secure themselves from hackers and malware, government legislation on cybersecurity is a necessity, bringing potential benefits to society as a whole. Just look at the number of confidential credentials posted on the Dark Web by hackers, which stands at 12.6 billion and counting. There are literally more hacked accounts than there are people on Earth. If that is not a call to action, I am not sure what is.

#### Safeguarding personal information

In this digital age, personal data is constantly at risk of being compromised. Yet governments and organisations force us to give up more and more of our information. We often have no choice but to fill in the online forms presented to us, typically with the exact information a

hacker can use to steal our identities. Instances of identity theft, financial fraud and unauthorised access to private information have become alarmingly common. Government legislation on cybersecurity can empower individuals by instituting standards and regulations to ensure the protection of personal information. The implementation of strong data protection laws, such as stringent encryption protocols and mandatory breach notification requirements, can significantly reduce the risk of data breaches and protect citizens from the potential consequences of cybercrime.

#### Educating and enhancing public awareness

With the rapid advancement of technology, cyber threats are continuously evolving, necessitating ongoing education and awareness initiatives. Government legislation in cybersecurity can facilitate the implementation of public awareness campaigns, educational programmes

and training opportunities aimed at increasing cyber literacy among citizens. Helping citizens become aware of the tactics used by cyber criminals is imperative. By promoting responsible digital practices and equipping individuals with the skills to protect themselves online, government legislation can empower citizens to navigate the cyberspace securely, ultimately reducing susceptibilities to cyberattacks. Artificial intelligence is bringing a whole new level of threat too, as what we see, hear and believe is being challenged with ever more sophisticated deep fakes.

#### Supporting economic stability

Cyber threats not only jeopardise individuals' privacy but also pose a significant risk to our economies. Businesses of all sizes, from multinational corporations to small startups, are increasingly vulnerable to cyberattacks that can result in financial losses, reputational damage and even bankruptcy.

### Highlights

- the urgency to prioritise cybersecurity has never been greater, with cyber threats escalating in complexity and severity
- artificial Intelligence is bringing a whole new level of threat, as what we see, hear and believe is being challenged with ever more sophisticated deep fakes
- government legislation on cybersecurity can help build a resilient cyber infrastructure that protects us, empowers us and propels us forward into a secure digital future



“  
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 ”



Government legislation in the realm of cybersecurity can foster a secure environment for businesses to thrive. By mandating adequate cybersecurity measures and promoting information sharing about emerging threats, governments can provide businesses with the necessary tools to safeguard their digital assets and ensure economic stability. For governments to implement not only threat intelligence, but also install 'cyber radar,' to monitor threats in real-time, would make all the difference to ongoing economic stability.

#### **Protecting national security**

Cyberattacks now have the potential to disrupt essential services, compromise sensitive government information, and even threaten national security. By legislating cybersecurity, governments can establish comprehensive frameworks to protect critical infrastructure, safeguard classified data and respond effectively to cyber threats that may originate from both internal and external sources. This proactive approach allows governments to counteract potential attacks and reduce the impact on the nation's security. The first blow to a nation's security, even in the case of a war commencing, is far more likely to

come from a targeted cyberattack than a barrage of cruise missiles. Indeed, modern warfare now includes the use of hackers and malware, as much as tanks and aircraft. The biggest threat to a nation, or an economy, is likely the use of an enemy's cybersecurity equipment during a time of peace, only for that equipment to become a Trojan Horse, if and when a war, or even a cold war, commences.

#### **Promoting international cooperation**

Cyber threats are not confined within national borders; they are a global concern. Government legislation on cybersecurity creates a foundation for international cooperation in combating cybercrime. On a non-military, law enforcement level, global cooperation can help the entire world combat cyber criminals much more effectively. By establishing international standards and frameworks, governments can collaborate with other nations to address cross-border cyber threats more effectively. This collaborative approach will facilitate information sharing, joint investigations and the extradition of cyber criminals, ultimately leading to a safer and more secure cyberspace on a global scale. In the end, there is essentially

one internet to police, despite that internet existing across some 206 economies. This means securing the internet needs to be done collectively. It is simply impossible for one country or economy, to do it all alone.

#### **Conclusion**

The urgency to prioritise cybersecurity has never been greater, with cyber threats escalating in complexity and severity. New malware, vulnerabilities and hackers appear all the time. They target our identities, our assets and even our core beliefs. Unfettered attacks on societies, can, and unfortunately do, result in a world where not even what is fact and what is fiction is clear anymore. Facts matter. Truth matters. The government's role in legislating cybersecurity cannot be underestimated. Leaving all of this to companies, organisations and private individuals just doesn't work. By enacting comprehensive cybersecurity legislation, governments can protect national security, safeguard personal information, support economic stability, promote international cooperation and educate the public about the importance of cyber resilience. It is through these measures that governments can create a safer and more secure digital environment for individuals, businesses and nations at large. The time to act is now, and through collaborative efforts between governments, industries and citizens, we can build a resilient cyber infrastructure that protects us, empowers us and propels us forward into a secure digital future.

**Michael Gazeley, Founder and  
 Managing Director**

*Network Box Corporation*

# Corporate Governance Paper Competition and Presentation Awards 2023

Saturday 16 September 2023  
10.00am - 1.00pm

The annual Corporate Governance Paper Competition and Presentation Awards organised by the Institute aims to promote the importance of good governance among local undergraduates. This is a great opportunity for students to learn about teamwork and to research, write and present their thoughts on a selected theme. The topic this year entices applicants to evaluate the question – ‘Climate change disclosures – is the world too focused on this topic?’

- Awards**
- **Best Paper:** HK\$11,000  
The best paper will be published in the HKCGI monthly journal
  - **Best Presentation:** HK\$6,000
  - **Audience’s Favourite Team:** HK\$2,000
- ... and more prizes



For registration

For enquiries, please contact the Qualifications and Assessments Section at (852) 2830 6039 or email: [student@hkcgi.org.hk](mailto:student@hkcgi.org.hk).

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# Upping the game





A new Institute report, published in June 2023, makes recommendations on how governance professionals can raise their game in the fast-changing business and social environment of Hong Kong and the Mainland.

The roles of company secretaries and governance professionals vary depending on the nature of the organisations they work for. This is good news for practitioners in the sense that they acquire a broad and varied experience, but it presents challenges in terms of designing the education and training that will prepare them for their roles. This is further complicated by the fact that the governance professional role continues to evolve over time as organisations adapt to the changing business and social environments in which they operate.

### The Report

The above trends have been closely followed by the Institute over many years and HKCGI has been focusing its education, training and research activities on preparing practitioners for broader strategic roles in areas such as risk management and applied governance. A new Institute research report – Corporate Governance and Governance Professionals in Hong Kong/China: Upping the Game (the Report), published in June this year, contributes new and useful insights into how practitioners can prepare themselves for their expanded roles and thus enhance the value they bring to the organisations they work for.

The Report, which is the result of a collaboration between the Institute's Technical Consultation Panel (TCP) and three academics in Hong Kong and the UK, explores local and global trends

impacting HKCGI members and makes recommendations for practitioners and the Institute to consider in mapping a path forward.

### Staying relevant

The Report acknowledges that the current global environment within which governance professionals work is unusually uncertain. Organisations of all types have been subject to multiple major challenges such as the Covid pandemic, climate change, digital transformation and ongoing geopolitical tensions. The Report adds, however, that this presents opportunities for the profession.

'By combining the necessity of change brought about by issues such as Covid, climate change, technology and other challenges, there is an opportunity to reimagine the role of the company secretary/governance professional, not

only as a key governance professional but as a key player in the boardroom makeup of the future,' it says.

In this context, the Report explores a number of specific practice areas where governance professionals can upskill and add more value. These include the unique contribution they can make to ESG and technology risk management, and helping their organisations navigate between the two different business cultures on both sides of the Lo Wu border.

### Assisting with digital transition

'Digital transformation,' the Report points out, 'is a necessity rather than an option.' Moreover, it is not something that can be left solely to technology professionals – many aspects of governance are being impacted as organisations accelerate their adoption of relevant technology.

## Highlights

- the Institute's latest research report explores local and global trends impacting HKCGI members and makes recommendations for practitioners and the Institute to consider in mapping a path forward
- the Report highlights the fact that practitioners need to be more tech savvy in the emerging operating environment – both as a practical necessity in terms of using new technology to perform their roles, and also to be in a position to advise the board on technological and other related risks
- practitioners can play a valuable role in assisting organisations to develop better corporate governance practices that consider both local conditions and international standards

A good example of this is the adoption of virtual or hybrid meetings – an area where governance professionals are closely involved.

The Report highlights the fact that practitioners need to be more tech savvy in the emerging operating environment – both as a practical necessity in terms of using new technology to perform their roles, and also to be in a position to advise the board on technological and other related risks.

It also notes that the adoption of new technology is shaping the function of governance professionals in organisations. Generally, many of the traditional administrative functions of the company secretary, for example, are increasingly subject to automation. This has meant that practitioners can spend less time on regulatory filing, record-keeping and scheduling, and more time on advising directors on risk management and compliance issues.

‘While the traditional role of the company secretary/governance professional has been to ensure statutory compliance, recent trends have added new responsibilities. For example, risk monitoring, strategic resilience and stakeholder engagement are necessary to deliver positive governance outcomes,’ the Report notes.

#### Addressing ESG issues

The Report notes that organisations are facing increased pressure to improve their ESG performance and reporting. This is not only via the increased expectations of investors and other stakeholders in this space, it is also increasingly hardwired into

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there is an opportunity to reimagine the role of the company secretary/governance professional, not only as a key governance professional but as a key player in the boardroom makeup of the future  
”

the ESG legislation and regulation that organisations are subject to.

These trends have focused attention on the responsibilities of boards in ESG governance. In turn, governance professionals have been seeing climate change and ESG become an increasing part of their board advisory and compliance work, and the Report urges practitioners to ensure they are well-versed in relevant issues and developments so that they can effectively advise the board on the integration of ESG value drivers into sustainable business models.

#### Navigating cultural differences

The above trends are global and have been impacting governance professionals around the world, but the Report also highlights a local trend impacting HKCGI members.

‘It is well known that the business norms and practices in Hong Kong and other Greater Bay Area (GBA) cities on the Mainland are in many aspects different,’ the Report notes. Organisations will benefit from having governance professionals with an appreciation of the differences between the two cultures and business environments. HKCGI members can benefit from staying ‘in the loop’ with what is happening in key GBA cities.

‘The skills, emotional intelligence, and in-depth appreciation of the subtle cultural differences should not be overlooked, requiring mental dexterity and diplomatic skills at times to bridge the differences and bring about positive outcomes for the board and shareholders. This added value that the role brings the board often goes unacknowledged by the wider business community,’ the Report says.

It adds that practitioners can play a valuable role in assisting organisations to develop better corporate governance practices that consider both local conditions and international standards.

#### Recommendations

The Report’s recommendations focus on two main areas – getting the company secretary/governance professional role the recognition it needs to function effectively and ensuring that the training practitioners receive is best suited to the varied roles they need to perform.

##### 1. Re-titling the role as Chief Governance Officer

The Report notes that both authority and autonomy are crucial for governance professionals to be able to function effectively. ‘Formal authority and recognition from

internal and external stakeholders of the company must be conferred onto the company secretary/governance professional,' the Report says.

While governance professionals have been gaining in seniority as their roles evolve – the company secretary role has long been a part of senior management for example – the Report suggests there is room to further enhance their standing and reputation. It therefore recommends retitling this role as the Chief Governance Officer (CGO).

The CGO, the Report suggests, could have responsibilities in risk management and compliance. 'One of the key responsibilities of a company secretary/governance professional for listed entities is to take the lead in compliance with the Listing Rules, plus a miscellaneous number of compliance obligations. Taking on the head of compliance would be an organic growth,' it says.


The CGO would also be closely involved in monitoring compliance risk at the board level. The Report points out that this aspect of the job would be critical in the current operating environment. 'Compliance obligations are expected to increase, especially for companies in Hong Kong or those listed on Hong Kong Exchanges and Clearing Ltd dealing with a complicated maze of Mainland laws and provincial rules in the GBA on the one hand, and on the other hand, a large number of laws from various foreign jurisdictions around the world arising from trade in goods and services, including sensitive matters like sanctions,' it says.

## 2. Enhancing CPD training

A consistent theme of the Report is that governance professionals need to upskill and its second recommendation is a logical extension of this theme. The Report recommends enhancing the CPD training of practitioners in areas formerly outside the traditional domain of the company secretary's duties.

In particular, this would include:

- crisis management and business continuity management
- digital literacy and competence (including basics on AI)
- cybersecurity management
- climate risk management, and
- business and related laws in the Mainland.

Furthermore, the Report suggests that the Institute's international qualifying scheme, currently recognised as a postgraduate Master's degree, could be upgraded to become a Doctor of Business Administration (DBA) in Governance, Risk and Compliance. 

*The expansion of the responsibilities of governance professionals into ESG and technology governance was explored in the research report (Roles of Governance Professionals in Today's Post-Pandemic and Dynamically Changing Risk Environment) published by the Institute in May 2022 and available from the Institute's website: [www.hkcgj.org.hk](http://www.hkcgj.org.hk).*

## Credits

The Report reviewed in this article was authored by:

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The Contributing Editor was Institute Deputy Chief Executive Mohan Datwani FCG HKFCG(PE) and the project was supervised by the Institute's Technical Consultation Panel (TCP), chaired by April Chan FCG HKFCG. The Institute expresses gratitude to TCP members, Ernest Lee FCG HKFCG(PE), Institute President, and Ellie Pang FCG HKFCG(PE), Institute Chief Executive, for their contributions to this project. The authors would like to acknowledge the contributions of Jessa Alfajardo, Research Assistant at HKBU Business School.



# Attention all auditors

Hong Kong's SFC and AFRC join forces to fight listed groups channelling funds to third parties in dubious circumstances



Hannah Cassidy and team from Herbert Smith Freehills examine the recent joint statement issued by the Securities and Futures Commission (SFC) and the Accounting and Financial Reporting Council (AFRC) on suspected misconduct in the diversion of funds by listed issuers, and provide a valuable summary of the key observations and expected standards of conduct and practices.

On 13 July 2023, the SFC and the AFRC (formerly known as the Financial Reporting Council) issued their first joint statement (Joint Statement). This comes less than a year after the new regulatory regime of the accounting profession came into operation (on 1 October 2022). The Joint Statement addresses an observable increase in instances of suspected misconduct involving listed issuers diverting their funds to third parties through dubious means under the pretext of loans, which in some cases may be called advances, prepayments, deposits or some other label. It also sets out the SFC and AFRC's key observations, as well as the expected standards of conduct and practices. Since 1 October 2022, the AFRC has been vested with expanded statutory functions to, among others, deal with matters regarding inspection, investigation and discipline of the accounting profession. We expect the AFRC to use its new powers – and this Joint Statement serves as a reminder to those involved in the accounting practices of listed companies of the potential consequences of non-compliance.

#### Key takeaways

- The Joint Statement reinforces the SFC and AFRC's commitment to promoting good corporate governance, maintaining the integrity of Hong Kong's capital

market and combating market misconduct to uphold public confidence in its effective functioning. The SFC and the AFRC will issue further joint statements on common regulatory concerns.

- It is the responsibility of management to establish a proper control environment and to maintain policies and procedures for internal controls to safeguard the company's assets, prevent and detect fraud and errors, and ensure the accuracy of the company's financial reports. These internal controls should also ensure the legitimacy of the company's operations and compliance with all applicable laws and regulations.

- The board of directors, including its audit committee, should be aware of their duties to the listed issuer and its shareholders to prevent losses or misuse of assets, ensure effective internal controls over loan granting, monitor repayment, and provide adequate disclosure in financial statements and announcements. The audit committee should ensure that appropriate internal controls are in place to detect irregularities and investigate any suspicious or irregular transactions.
- Auditors must obtain reasonable assurance that the financial statements are free from material misstatement, maintain professional scepticism

#### Highlights

- the SFC and AFRC's first joint statement addresses an observable increase in instances of suspected misconduct involving listed issuers diverting funds to third parties through dubious means under the pretext of loans
- where the AFRC identifies accounting non-compliance, it may take action against the directors of a listed issuer, a certified public accountant, a public interest entity auditor or registered responsible persons
- identified dubious loans are seen to lack commercial rationale or proper records, sufficient risk assessments, due diligence and adequate internal control systems by the listed issuer



throughout the audit and adjust their approach to obtain sufficient evidence to support their audit conclusions if a dubious loan is identified.

- Directors, officers or auditors of a listed issuer who suspect or have knowledge that a fraudulent act may occur or has occurred should promptly report the matter to the SFC on a confidential basis.
- There may be potential criminal or civil consequences if false or misleading information relating to loans is disclosed. Where the AFRC identifies accounting non-compliance, it may also take action against the directors of a listed issuer, a certified public accountant, a public interest entity (PIE) auditor or registered responsible persons.

**Overview**

The SFC and the AFRC noted that the suspected misconduct cases involving dubious loans were often arranged without adequate commercial rationale or proper records, and at times lacked sufficient risk assessments, due diligence or internal controls. The recipients of the funds are often related to or affiliated with the listed issuer or its management, or their identities are unknown. The listed issuers suffered substantial losses when the loans became unrecoverable.

Table 1 summarises the three key observations set out by the SFC and AFRC in the Joint Statement, together with some examples of dubious arrangements adopted by listed issuers.

**Table 1: key observations**

Observations	Examples
Lack of commercial rationale	<p>Granting loans to third parties at an interest rate far below its cost of funds and subsequently taking out a loan for a similar amount from a finance company at a much higher rate.</p> <p>Granting unsecured and interest-free loans to third parties, exposing the issuer to unjustified credit risks and other potentially harmful consequences.</p> <p>Making prepayments for purchases of goods where there was no contractual requirement to make advance payments and the goods were never delivered.</p>
Insufficient risk assessments, due diligence and documentation to evidence the process under which the loans were made	<p>Granting unsecured loans to business acquaintances with no prior business relationship solely based on the potential to bring in new business, without conducting proper credit assessments or background checks.</p> <p>Granting loans without any collateral on the basis that the borrowers had assets to substantiate their ability to repay, without conducting proper due diligence to verify their financial capacity or the encumbrances on the assets.</p>
Inadequate internal control systems and policies in place for granting, monitoring and recovering the loans	<p>Loans of significant amounts were not properly approved by the listed issuer’s board of directors, but were approved by the chairman (either alone or with a few designated directors) or by lower-level management personnel without formal scrutiny by the board.</p> <p>Lack of internal controls to ensure prompt recovery actions (for example, issuing demand letters or initiating legal actions).</p> <p>Extending repayment periods repeatedly without any legitimate commercial reason or proper approval.</p> <p>Determining the impairment of dubious loans on an arbitrary basis without sufficient evidence to show how the impaired amount was objectively determined and properly approved.</p>

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**this Joint Statement serves as a reminder to those involved in the accounting practices of listed companies of the potential consequences of non-compliance**  
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#### Expected standards of conduct and procedures

The Joint Statement provides the standards of conduct and procedures that directors, audit committees and auditors of listed issuers should adhere to in relation to loans or similar arrangements.

#### 1. Directors of listed issuers

The directors of listed issuers are reminded to:

- ensure that material loans are subjected to effective vetting, risk assessments and due diligence processes, and proper approval
- ensure that the company's public disclosures, including financial statements, give a true and fair view in accordance with the relevant financial reporting requirements
- when vetting, granting and monitoring loans, making disclosures and managing collectability, the directors should:
  - o act in good faith in the best interests of the listed issuer, fulfil their fiduciary duties and exercise due care, skill and diligence

- o critically assess the commercial rationale for granting loans and ensure that loans are being granted for reasons and on terms that are beneficial for the company
- o ensure that the listed issuer has established and maintained effective internal controls and systems for assessing and managing credit risks, granting loans, monitoring repayment, following up on overdue amounts, identifying incidences of impairment, and verifying related record-keeping and reporting
- o ensure that a credit assessment is undertaken by competent personnel and appropriate collateral is secured where the circumstances warrant
- o ensure that the listed issuer maintains proper documentation to evidence and corroborate due diligence and credit assessments, approval of loans, execution of guarantees given or assets pledged, and sufficiency and enforceability of collateral,

as well as the details of the professional advice obtained in that regard, if any

- o ensure that the listed issuer has established procedures for identifying and reporting material issues to the board, and for complying externally in accordance with legal and regulatory requirements, and
- o for loans to related parties, ensure that the rationale for granting the loan is in the best interests of the listed issuer and that the listed issuer complies with applicable legal and regulatory requirements.
- take reasonable steps to ensure that the listed issuer's risk management and internal control systems are effective and do not rely solely on management's representations in the company's annual corporate governance report made pursuant to the Listing Rules.

The boards of directors are also encouraged to invite auditors to attend board meetings where significant audit-related matters are discussed and addressed by management, including matters relating to loans.

In addition, the AFRC reminds directors of their responsibility for risk management and internal controls as prescribed in Appendix 14 (Corporate Governance Code) of the Listing Rules and for reporting the effectiveness of risk management and internal control systems to shareholders in the Corporate Governance Report.



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**the audit committee of a listed issuer plays a crucial role in overseeing the listed issuer’s effective internal control and risk management systems**  
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**2. Audit committees of listed issuers**

The audit committee of a listed issuer plays a crucial role in overseeing the listed issuer’s effective internal control and risk management systems. The committee should ensure that the listed issuer has appropriate and effective controls for granting loans, monitoring their repayment and determining impairment, and that the loans are appropriately accounted for and disclosed in the financial statements. Furthermore, the committee should regularly review thresholds for loan approval and maintain communication with the auditors to address significant matters related to loans identified during the audit.

of the loans in question and consider the possibility of management override

- design and perform audit procedures responsive to the assessed risks of material misstatement and effectiveness of internal controls
- maintain professional scepticism and critically evaluate management’s representations about the loan’s purpose, counterparty and recoverability by corroborating them with independent evidence and resolving inconsistencies

- o critically evaluate the commercial rationale for the loan

- o inspect correspondence relating to the loan and original loan agreements to verify that the loan was valid and made in accordance with the agreed terms

- o inspect evidence of credit assessments, due diligence procedures and proper approvals

- o obtain independent evidence of the existence and identity of the counterparty

- o inspect documents relating to the transfer of funds to ensure that funds flowed through the company’s bank accounts and to the counterparty in accordance with the agreed terms, and

- o obtain direct written confirmation of the principal, terms and outstanding balance of the loan from the counterparty.

**3. Auditors of listed issuers**

When examining dubious loans recorded in a listed issuer’s financial statements, the auditors, being the gatekeepers to quality financial reporting, are expected to:

- consider the need to attribute a higher risk of material misstatement due to fraud or other irregularities
- evaluate the effectiveness of the listed issuer’s internal controls over the issuance and monitoring

- evaluate the accounting policies and estimates adopted by management regarding the impairment of loans and the adequacy of related disclosures in the financial statements

- communicate significant issues identified during the audit to those charged with governance (including the audit committee)

- carry out the following audit procedures:



To the extent that audit procedures carried out on dubious loans are part of the overall audit process for a listed issuer, the AFRC points out that there should be adequate quality controls in the form of supervision and review of the work of the audit team and proper review by the engagement quality control reviewer of the significant judgments and conclusions made by the audit team.

Auditors are reminded that in certain circumstances, they are legally obliged to report observed or suspected fraud to the appropriate authority, despite their professional duty of confidence to the client. Section 381 of the SFO provides immunity from civil liability to a person who is or was an auditor of a company which is listed, or any associated company of the listed company, who communicates in good faith to the SFC any information or opinion on suspected fraudulent activities or misconduct in the management of a listed company. The SFC strongly advises auditors to report any irregularities identified in a timely manner. If an auditor is uncertain about the appropriate course of action in those situations, the auditor should consider obtaining legal advice regarding the responsibility to report or disclose.

#### Potential consequences for failures of listed issuers

Disclosure of false or misleading information relating to loans may constitute a criminal offence or market misconduct under the SFO, including:

- section 298 (offence of disclosure of false or misleading

information inducing transactions in securities)

- section 384 (provision of false or misleading information to the SFC or the Stock Exchange of Hong Kong Limited (SEHK)), and
- section 277 (disclosure of false or misleading information inducing transactions in securities).

In addition, the SFC may take civil action pursuant to section 214 of the SFO against wrongdoing directors or persons involved in the management of the listed issuer who are involved in granting or managing the dubious loans, and seek orders for disqualification and compensation.

The SFC may also collaborate with other law enforcement agencies, including the Hong Kong Police Force and the Independent Commission Against Corruption, to undertake enforcement action where necessary, for example where the granting of dubious loans involves conspiracy to defraud, deception, bribery, dishonest conduct or other fraudulent activities.

Where accounting non-compliance is identified from an enquiry or regular review of listed issuers' financial statements by the AFRC, the AFRC will issue a notice to the directors concerned for the removal of the non-compliance within a specified period. Failing which, the AFRC will apply to the court for mandatory removal or refer to SEHK for follow-up action.

Furthermore, the AFRC may initiate an investigation of certified public accountants (CPA) responsible for the

preparation or approval of the financial statements and impose sanctions on the CPA pursuant to section 37CA of the Accounting and Financial Reporting Council Ordinance (AFRCO), including but not limited to suspension or revocation of registration, cancelling the practising certificate and ordering a pecuniary penalty not exceeding HK\$500,000 for each misconduct.

#### Potential consequences for failures of PIE auditors and registered responsible persons

Deficiencies in audit procedures performed by a PIE auditor and a registered responsible person on dubious loans could constitute misconduct under sections 37A and 37B of the AFRCO and result in sanctions under sections 37D and 37E of the AFRCO, including a pecuniary penalty not exceeding the amount which is the greater of HK\$10 million or three times the amount of profit gained or loss avoided by the person as a result of the misconduct. The AFRC can also revoke, suspend or prohibit the auditor from applying for registration or recognition as a PIE auditor. The AFRC may also remove a person's name from the list of registered responsible persons of the PIE auditor.

**Hannah Cassidy, Partner, Head of Financial Services Regulatory, Asia;**  
**Kyle Wombolt, Partner, Global Head – Corporate Crime and Investigations;**  
**Gareth Thomas, Partner, Head of Commercial Litigation; Rachel Shek, Partner; and Leanette Ko, Associate**  
*Herbert Smith Freehills*

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# The board's role in a company's digital transformation

Joan Conley, Senior Advisor on Corporate Governance and ESG Programs, and Karen Snow, Senior Vice-President and the Global Head of Listings, Nasdaq, look at key issues boards should consider in the course of their company's digital transformation.



Almost every company today has undergone some sort of digital transformation to improve its operational efficiency, enhance its competitive position and/or safeguard its business. Given the pace of the digital evolution and advancement in artificial intelligence (AI), company boards and management teams are challenged to really lean into technology innovation and education – both offensively and defensively – and ensure they incorporate digital transformation in the company strategy, while also ensuring proper oversight and governance.

Stanford's 2023 Artificial Intelligence Index Report found that the amount of private investment in AI in 2022 was 18 times greater than it was in 2013. The report also found that the proportion of companies adopting AI has more than doubled since 2017, showing us that AI is taking the centre stage for companies looking to cut costs and increase revenue.

Advancements in the digital space have redefined how businesses and consumers interact. Gartner describes digital transformation as 'anything from IT modernisation (for example, cloud computing), to digital optimisation, to the invention of new digital business models'. With each advancement, whether that be the creation of the internet, e-commerce, mobile phone, cloud computing or AI, companies are leveraging technology to improve how they do business, from their company strategy to how they target, connect with and cater to their current customers, clients, employees and communities.

Whether for a public or private company, it is clear technology is unlocking a new set of opportunities and risks. Boards and management teams are responsible for ensuring that there is a digital strategy in place that allows the company to stay competitive in a rapidly changing environment, while also preventing the company from potentially making a catastrophic misstep.

Below, we propose key questions that boards should consider asking themselves about their company's digital transformation, regardless of whether the company is public or private.

***Does the company have a clear digital strategy and data governance framework and internal controls in place?***

A well-designed framework enables companies to define policies and rules, standardise the most important data terms, document decision-making processes, identify data-owners, disseminate roles and responsibilities, and construct a solid roadmap based on the company strategy and use cases. While the

board's role is primarily to provide oversight, it should ensure that management has created a clear digital strategy and data governance framework with controls in place. The board is also responsible for ensuring the company's internal audit team is testing those controls and confirming they are working properly via scenario analysis and tabletop exercises. The board should receive reports and briefings on the findings of these exercises and, in some cases, may even consider participating in them.

***Is there a board member education programme in place and/or strong technological expertise?***

While it is not a requirement to have a technical expert on the board, it is crucial that board members are willing to learn through ongoing education and training. Do they have the right mindset and desire to embrace technology? In addition, given that technology is ever-evolving, boards are getting creative in who they look to for insights. For example, some companies may rely on internal leadership, such as the CIO, CTO or CSO, while others may

## Highlights

- it is important that board members are well-versed on risks associated with the company's digital strategy and data governance framework
- while it is not a requirement to have a technical expert on the board, it is crucial that board members are willing to learn through ongoing education and training
- the board is responsible for ensuring the company's internal audit team is testing internal controls and confirming they are working properly via scenario analysis and tabletop exercises



source external experts to provide advisory to the board of directors or turn to third-party consulting firms to provide a more holistic view of the general digital landscape and competitor analysis.

### *Does the company's digital strategy follow relevant rules and regulations?*

If a company is public or thinking about going public, boards should conduct the due diligence necessary to abide by investment stewardship guidelines that pertain to their digital strategies. An effective digital strategy and data governance framework are important components of a company's corporate governance and risk management oversight program. Investors are seeking answers to the who?, what?, when? and where? questions pertaining to a company's digital strategy and data governance framework. For example, when looking at investment stewardship guidelines regarding AI, little has been published thus far, but more information will likely be available in the coming months about how institutional investors expect companies to incorporate AI and large language model (LLM) into their digital strategies.

### *Are proper risk management procedures in place?*

The rise of digital transformation brings with it new risk factors for boards to consider. It is important that board members are well-versed on risks associated with the company's digital strategy and data governance framework. For example, if a company allows for

online payments, are strategies in place to ensure customer information isn't exploited? If a company utilises ChatGPT, are tools in place to ensure all information is accurate? Again, boards may consider scenario planning tactics should risks come to fruition.

### *Is the company allocating enough capital to its digital transformation strategy and data governance?*

It is the board's role to understand how capital is being allocated. When it comes to digital transformation, companies have to prioritise their technological investments. The CIO may present his/her technology investment recommendations to the board. For companies nearing the public markets, they should consider investing in board management software and financial reporting systems. Companies should also think about operational efficiencies, driving margins and investing in technologies that will enhance their ability to compete and/or break even faster.

### *Can the board and management team keep up with the changing times?*

With the right talent, companies can keep pace with the changing landscape. It is the board's responsibility to make sure that the right CEO is in place and that he/she has strong talent on the management team to execute the company's strategy. For companies nearing the public markets, they should consider implementing an annual succession planning exercise, conducting a board evaluation every few years, and digitising their directors' and officers' questionnaires.

In addition, taking a closer look at board composition, a study published by Harvard Law School Forum on Corporate Governance found that the average age of S&P 500 board members was 62.4 years old. However, with the rapidly evolving digital climate, we suspect the average age of board members may decrease over time.

The board should ultimately view its role as a protector of the company's moat, looking at how the company can utilise technology to keep its competitive edge and protect against risk. And as technology evolves, boardrooms must too. The answer is not to stray away from the potential risks of digitisation, but instead see it as an opportunity to provide oversight to companies that have room to grow.

The companies that are the most prepared for their digital transformation are going to be able to ensure their strategy is implemented more effectively and efficiently than their competitors – and that responsibility starts with the board. Boards that are well-versed in their company's strategy and tuned in with the rapidly changing digital environment will likely see the most success.

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**More articles with insights in governance are available at [Nasdaq Governance Solutions \(nasdaq.com/solutions/governance\)](https://nasdaq.com/solutions/governance).**



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# Q&A on export of personal information under the Standard Contract: part 2





In this second and final part of their article, Connie Chen, Senior Counsel, and Maarten Roos, Managing Director, R&P China Lawyers, continue their discussion of the Mainland's new personal information protection legislation and its significance in particular for small-scale data exporters based in China, including foreign-invested companies.

In the first part of this article, published in last month's CGJ, we overviewed the new Measures on the Standard Contract for Outboard Transfer of Personal Information and the related Filing Guidance, including who is subject to filing and the legal consequences of failing to do so. In part two, we explore issues such as the stipulated obligations for the personal information handler and the foreign recipient, the rights of the personal information subject and the methods of dispute resolution.

#### *What notification and informing obligations does the Standard Contract stipulate for the foreign recipient in case of further transfer of the personal information?*

The notification and informing obligations of the personal information handler under the Standard Contract are consistent with the provisions of Articles 17, 31 and 39 of the Personal Information Protection Law of the People's Republic of China (PIPL). If the foreign recipient transfers personal information of individuals to third parties, then the Standard Contract requires the personal information handler to inform the individual of such other recipients, the storage period after export, the place of storage and other information as agreed in Appendix I.

In addition, due to the adoption of the 'third-party beneficiary'

mechanism (explained below), the personal information handler is also required to inform the personal information subject that he/she is a third-party beneficiary under the Standard Contract (for example, as part of a consent form).

#### *Is the personal information subject a party to the Standard Contract and how do we understand the concept of 'third-party beneficiary'?*

The concept of 'third-party beneficiary' draws on the content the EU Standard Contractual Clauses for the Transfer of Personal Data to Third Countries, which endows the personal information subject corresponding rights under the Standard Contract. As a third-party beneficiary, the personal information subject is entitled to claim its personal information rights against one or both of the personal information handler and the foreign recipient.

#### *What rights does the personal information subject have?*

The third-party beneficiary is entitled to the right to know and to make decisions on the processing of his/her personal information, the right to restrict or refuse processing of this personal information by others, the right to consult or copy this personal information and the right to request the personal information handler to correct, supplement or delete the personal information or to explain the processing rules for this personal information. In addition, the third-party beneficiary is entitled to directly claim or demand performance of obligations in relation to personal information rights under the Standard Contract against one or both the personal information handler and the foreign recipient. In the event that the personal information handler or the foreign recipient fails to fulfil its contractual obligations, the third-

## Highlights

- the Standard Contract accords comprehensive rights to the personal information subject, including the right to bring a lawsuit to a competent court in China against either the personal information handler or the foreign recipient in the event of breach of contract
- companies must prepare a protection impact assessment that provides a full analysis of the personal information to be exported, as well as how this will be handled in terms of compliance with all relevant laws
- in the case of any dispute, the Standard Contract allows the parties to agree on either litigation or arbitration as a means of resolution

“  
**as a third-party beneficiary, the personal information subject is entitled to claim its personal information rights against one or both of the personal information handler and the foreign recipient**  
 ”



party beneficiary may bring a lawsuit to a competent court in China in accordance with the Standard Contract and hold the above-mentioned parties liable for breach of contract.

***What contractual obligations does the personal information handler have under the Standard Contract?***

The personal information handler shall perform the following obligations:

- follow the principles of minimum necessity when carrying out export of personal information
- fully fulfil the obligation of notification
- obtain separate consent from the personal information subject with respect to the personal information to be exported, consent of the minor’s parents or any other guardians and written consent
- upon request by the personal information subject, provide the subject with a copy of the Standard Contract

- reasonably supervise the compliance of the foreign recipient
- provide the foreign recipient with copies of China’s laws and regulations and technical standards
- cooperate with the regulatory authority, accept inquiries and provide necessary information and audit results for fulfilling the Standard Contract
- carry out the personal information protection impact assessment (PIA) and keep this report on file, and
- assume a burden of proof for the compliant performance of obligations under the Standard Contract.

***What are the foreign recipient’s contractual obligations under the Standard Contract?***

The foreign recipient shall fulfil the following obligations:

- follow the principle of minimum necessity

- process the personal information strictly within the agreed scope
- in principle, not transfer the personal information to other foreign third parties unless the conditions elaborated below (see ‘Under what conditions can the foreign recipient transfer personal information to any other foreign third party?’) are satisfied
- take technical and managerial measures to ensure the security of personal information
- ensure that the relevant personnel perform their confidentiality obligations
- establish access control permissions of minimum authorisation
- follow the principle of the shortest storage period
- fulfil the obligation to cooperate with the personal information handler
- establish an emergency response mechanism for security incidents

- upon the request of the personal information subject, provide such subject with a copy of the Standard Contract
- keep records of personal information processing activities
- agree to accept the supervision and management of the regulatory authority
- use automated decision-making under the condition of meeting the requirements thereof, and
- inform the personal information handler of the impact of its national laws and regulations and law enforcement activities on the performance of contractual obligations and the rights of the personal information subject in a timely manner.

***How do the personal information handler and the foreign recipient assume their liabilities to the personal information subject?***

The personal information handler and the foreign recipient shall be jointly and severally liable to the personal information subject for any material or non-material damage caused thereto due to a breach of the Standard Contract. This means that foreign recipients of personal information from China have an interest to make sure that the Chinese personal information handler has obtained proper consent.

***What shall be assessed in the personal information PIA referred to in the Standard Contract?***

As part of the filing, every company must prepare a personal information

PIA. In accordance with the Filing Guidance, this should include:

- basic information about personal information to be exported, including the type, quantity and sensitivity of personal information, the purpose and method of processing, and the processing scope of the foreign recipient
- the legality, legitimacy and necessity of export of personal information
- risks of export, including to personal information rights and interests under normal circumstances, data security accidents, impact on personal rights and interests, and the channels for safeguarding rights
- information of the foreign recipient, including managerial measures, technical measures and protection level of personal information taken by the foreign recipient and data security, and protection obligations undertaken by the foreign recipient through the Standard Contract and other legal documents, and
- whether the legislation and regulation regarding personal information protection of the place where the foreign recipient is located will affect the foreign recipient's performance of the Standard Contract.

The specific implementation framework of the personal

“  
as part of the filing,  
every company must  
prepare a personal  
information protection  
impact assessment  
”

information PIA shall be based on Annex V, Personal Information Protection Impact Assessment Report (Template) of the Filing Guidance. We expect this template to be an important basis for determining whether an enterprise will be able to pass the filing examination of the Standard Contract.

***Under what conditions can the foreign recipient transfer personal information to any other foreign third party?***

Upon satisfaction of all the following conditions, the foreign recipient is permitted to transfer the personal information on to other foreign third parties:

- the transfer is necessary for business
- informed the personal information subject of the identity and contact information of the third party, the purpose and method of processing, the type of personal information, and the method and procedures for the personal information subject to exercise its rights, and separate consent has been obtained (except as otherwise provided by laws and regulations)



“  
**the Standard Contract  
 allows the parties to  
 agree on either litigation  
 or arbitration**  
 ”

- if any sensitive personal information is involved, has informed the personal information subject of the necessity of such transmission and its impact on the personal information subject. If it is difficult to inform the personal information subject or to obtain separate consent, the foreign recipient shall inform the personal information handler in a timely manner and ask for its help to inform the personal information subject or to obtain separate consent
- a written agreement has been entered into by the foreign entity and the third party, so as to ensure that the protection level of personal information adopted by the third party is not lower than the protection standard stipulated by relevant laws and regulations in China
- the foreign recipient will be jointly and severally liable for the damage that may be caused to the personal information subject due to such transfer, and
- provide the personal information handler with a copy of the agreement entered into by

the foreign recipient and the third party.

*What are the conditions and legal consequences of a Standard Contract's termination?*

Article 7 summarises the conditions for and legal consequences of a termination of the Standard Contract:

- if the foreign recipient breaches its obligations thereunder, the personal information handler may suspend the transmission of personal information to the foreign recipient. If the suspension time exceeds one month, either party to the Standard Contract may terminate the Contract
- if the foreign recipient's compliance with the Standard Contract will violate the laws of the country or region where it is located, either party thereto may terminate the Contract
- if the foreign recipient seriously or continuously breaches its obligations under the Standard Contract, the personal information handler may terminate the Contract, and
- if, in accordance with the final decision made by the competent court or regulatory authority of the foreign recipient, the foreign recipient or personal information handler has breached its obligations under the Standard Contract, either party may terminate the Contract.

Upon termination, the foreign recipient shall return or delete the

personal information it received under the Standard Contract, and shall provide a written statement to the personal information handler.

*What methods of dispute resolution are stipulated in the Standard Contract?*

The Standard Contract allows the parties to agree on either litigation or arbitration. Litigation shall be before the competent court in China: the personal information handler may only bring a lawsuit to the people's court of the place where the Contract is performed, and the foreign recipient may bring a lawsuit to the competent court of the place where the personal information handler is located or where the Contract is performed. Regarding arbitration, the Standard Contract allows the parties to submit their disputes to China International Economic and Trade Arbitration Commission, China Maritime Arbitration Commission, Beijing Arbitration Commission (Beijing International Arbitration Center) or any other arbitration institutions located in jurisdictions that are members of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This to ensure that that arbitral awards can be enforced in China.

**Connie Chen, Senior Counsel, and Maarten Roos, Managing Director**  
*R&P China Lawyers*

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 June 2023

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## Professional Development

### Seminars: June 2023

**14 June**  
**Practical overview of HKEX's latest guidance on disclosure requirements**



**Chair:** Stella Lo FCG HKFCG(PE), Institute Qualifications (previously Education) Committee member and Technical Consultation Panel (TCP) – Public Governance Interest Group member, and Company Secretary, Guoco Group Ltd  
**Speakers:** Stephanie Chan, Partner, and Adrian Tang, Senior Associate, Sidley Austin

**15 June**  
**Overview of private funds regime in Hong Kong and Singapore**



**Chair:** Anita Chau FCG HKFCG, Executive Director, Corporate Services, Vistra  
**Speakers:** Willa Chan ACG HKACG, Founding Principal, Willa Legal; and Brandon Tee, Managing Director, BTPLaw LLC

**19 June**  
**Offeree board in a takeover: what you need to know and to plan in advance**



**Chair:** Daniel Chow FCG HKFCG(PE), Institute Treasurer, Professional Development Committee Vice-Chairman, Qualifications Committee member and Investment Strategy Task Force member, and Senior Managing Director, Corporate Finance and Restructuring segment, FTI Consulting (Hong Kong) Limited  
**Speakers:** Tommy Tam, Partner, and Andre Da Roza, Counsel, Clifford Chance

**20 June**  
**China tax controversy: practical considerations & case studies**



**Chair:** Patrick Wong FCG HKFCG, Institute Membership Committee member, and Director, Aoba CPA Ltd  
**Speaker:** Caesar Wong, Managing Director, China Business Services, RSM Tax Advisory (Hong Kong) Ltd

**23 June**  
**Company secretarial practical training series: connected transactions – practice and application**  
**Speaker:** Ricky Lai FCG HKFCG(PE), Company Secretary, China Renewable Energy Investment Ltd

**29 June**  
**The Civil Code of the People's Republic of China: implications for HR management, contracts & cross-border financing**

**Chair:** Michelle Ho FCG HKFCG(PE), Institute Professional Services Panel member, and Managing Director of Governance Services, Computershare  
**Speakers:** Liu Ting, Partner, Sun Shulin, Partner, and David Lam, Partner, King & Wood Mallesons



## ECPD Videos on Demand

Some of the Institute's previous ECPD seminars can now be viewed on its online platform – ECPD Videos on Demand.

Details of the Institute's ECPD Videos on Demand are available in the Professional Development section of the Institute's website: [www.hkcgj.org.hk](http://www.hkcgj.org.hk).

For enquiries, please contact the Institute's Professional Development Section: (852) 2830 6011, or email: [cpd@hkcgj.org.hk](mailto:cpd@hkcgj.org.hk).

## ECPD forthcoming seminars

Date	Time	Topic	ECPD points
14 September 2023	4.00pm–5.30pm	Latest global sustainability & climate disclosure standards and HKEX rules	1.5
19 September 2023	4.00pm–5.30pm	Tax governance enhancement: due compliance, less tax (cross-border transactions)	1.5
22 September 2023	2.15pm–5.30pm	Family office: governance aspects, thoughts and opportunities	3
25 September 2023	6.45pm–8.15pm	Compliance check of Hong Kong private companies: purposes, practical tips and remedial actions	1.5

For details of forthcoming seminars, please visit the Professional Development section of the Institute's website: [www.hkcgj.org.hk](http://www.hkcgj.org.hk).

## Membership

### New Fellows

The Institute would like to congratulate the following Fellows elected in May 2023.

#### Law Heung Chung FCG HKFCG

Mr Law has been working in a private Hong Kong group as director of Finance and Compliance Management since April 2023. He was a Financial Controller and Company Secretary for seven years, involved in setting up businesses in Hong Kong. Mr Law is responsible for various finance-related duties such as monitoring the progress of financial reporting and reviewing internal control

procedures, as well as performing legal and compliance work, and is also responsible for financing and refinancing projects for vessels. Mr Law obtained a bachelor's degree in accountancy and has over six years of experience as an external auditor.

#### Poon Mo Kiu, Iris FCG HKFCG

Ms Poon has been practising as a solicitor in Hong Kong since 2005. She obtained her LLM from the University of London. Ms Poon has worked in major law firms in Hong Kong and has in-house experience as a regional legal counsel for a US-listed company. She currently works as a consultant at

Raymond Siu & Lawyers, specialising in corporate and commercial law.

#### The Hon Chan Chun-ying JP FCG HKFCG

Member, Functional Constituency (Finance) of the Legislative Council, HKSAR Government, and Adviser, Bank of China (Hong Kong) Ltd (Stock Code: 2388)

#### Lai Siu Man FCG HKFCG

Manager, Moore Associates Ltd

#### Lee Hoi Man FCG HKFCG

Assistant Company Secretary, HSBC Global Services (Hong Kong) Ltd

## Membership (continued)

### New graduates

The Institute would like to congratulate our new graduates listed below.

Chen Hong	Mark Schroeder	Shi Panpan	Yang Xue	Zhang Tieying
Chen Xin	Qu Jiahua	Wang Xiru	Yu Xinchun	Zhou Jieran

### Membership activities: June 2023

2 June

Wellness series: prevention and treatment of skin diseases in Chinese medicine



10 June

Governance Professional Mentorship Programme and Student Ambassadors Programme networking event



17 June

Fun & Interest Group – golf fun day 2023



23 June

Dialogue between the board and company secretaries/ governance professionals



24 June

Community Service – volunteer training workshop for elderly service



### Forthcoming membership activities

Date	Time	Event
2 September 2023	2:30pm-4:30pm	Calling of the Guardians – from Professional Ethics to Corporate Governance (Visit to ICAC)

For details of forthcoming membership activities, please visit the Events section of the Institute's website: [www.hkcgj.org.hk](http://www.hkcgj.org.hk).

## Membership/graduateship renewal for the financial year 2023/2024

The renewal notice, together with the debit note for the financial year 2023/2024, was sent to all members and graduates by email at the beginning of July 2023 to the email address registered with the Institute. Members and graduates should settle the payment as soon as possible, but no later than Saturday 30 September 2023.

All members and graduates are highly encouraged to settle their annual subscription directly online. Please ensure that you settle your annual subscription by the deadline, as failure to do so will constitute grounds for membership or graduateship removal.

For enquiries, please contact the Membership Section: (852) 2881 6177, or email: [member@hkcgi.org.hk](mailto:member@hkcgi.org.hk).



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## Advocacy

### Thank you for making our 24th ACRU such a success

The Institute is pleased to announce the completion of the 24th Annual Corporate and Regulatory Update (ACRU) on 9 June 2023 at the Hong Kong Convention and Exhibition Centre. Our 24th ACRU attracted 2,200 online and in-person participants, a record high, and included Chartered Secretaries and Chartered Governance Professionals, other professionals, listed company directors and senior management who came together to hear the latest regulatory updates directly from regulators.

The Institute would like to express its appreciation to all the co-sponsors and speakers, including the Accounting and Financial Reporting Council, Companies Registry, Financial Services and the Treasury Bureau, Hong Kong Exchanges and Clearing Ltd, Inland Revenue Department and Securities and Futures Commission, as well as the chairs, sponsors and supporting organisations, who helped make the event a resounding success.



Through collective efforts, the Institute has promoted a high level of corporate governance that helps to uphold Hong Kong's reputation as a leading international financial centre.

The Institute looks forward to seeing you at the 25th ACRU in 2024.

For more information on ACRU 2023, please visit the ACRU website: <https://acru.hkcg.org.hk>.

### Institute representatives visit Beijing

On 28 June 2023, Institute President Ernest Lee FCG HKFCG(PE) led a delegation to Beijing to visit the China Securities Regulatory Commission (CSRC) and the China Association for Public Companies (CAPCO). The delegation from the Institute included Past President and Council member Natalia Seng FCG HKFCG, Past President Dr Maurice Ngai FCG HKFCG, Vice-President Dr Gao Wei FCG HKFCG(PE), Treasurer Daniel Chow FCG HKFCG(PE), Council members Wendy Ho FCG HKFCG(PE) and Edmond Chiu FCG HKFCG(PE), Chief Executive Ellie Pang FCG HKFCG(PE) and Beijing Representative Office Chief Representative Kenneth Jiang FCG HKFCG(PE).

The Institute would like to thank everyone who attended the talks for contributing to the Institute's ongoing work and progress in the Mainland.



Delegation team



Visit to CSRC



Visit to CAPCO

### Roundtable meeting with governance practitioners in Beijing

On 29 June 2023, Institute President Ernest Lee FCG HKFCG(PE) and the group of representatives from the Institute who accompanied him to the talks in Beijing the previous day all attended a roundtable meeting with 20 Mainland Institute members, students and Affiliated Persons, at which the Institute's latest developments were shared.



### Professional seminar at The Hong Kong Polytechnic University

On 23 June 2023, Matthew Young FCG HKFCG(PE), Institute Qualifications (previously Education) Committee Vice-Chairman, conducted a professional seminar on the roles of company secretaries and governance professionals in Hong Kong for 34 accounting undergraduates from The Hong Kong Polytechnic University. Information was also shared about the Institute's dual qualification of Chartered Secretary and Chartered Governance Professional.



### Restructuring of the Education Committee

One of the key objectives of the Institute's work is to be 'ahead of the curve' by cultivating the next generation of governance professionals through promoting the dual qualification of Chartered Secretary and Chartered Governance Professional, as well as the Chartered Governance Qualifying Programme (CGQP). Launched in January 2020, and with accreditation from CGI's Professional Standards Committee, the CGQP has been implemented smoothly.

Effective from 1 July 2023, the Education Committee has been renamed the Qualifications Committee to enhance the future development of the qualifying programmes that lead to membership of the Institute, as well as of quality assurance matters.

The Qualifications Committee is responsible for advising the Council on, and monitoring all aspects of, the CGQP and other qualification programmes that lead to membership of the Institute and CGI. The Secretariat's Education and Examinations Section has accordingly been renamed the Qualifications and Assessments Section.

Stay tuned for more information on the Institute's qualifying programmes and quality assurance updates.

## Chartered Governance Qualifying Programme (CGQP)

### Corporate Governance Paper Competition and Presentation Awards 2023

The annual Corporate Governance Paper Competition and Presentation Awards, organised by the Institute, is designed to foster appreciation of corporate governance among local undergraduates. The theme this year asks applicants to evaluate the question: 'Climate change disclosures – is the world too focused on this topic?'



The submitted papers will be reviewed and assessed by a panel of judges comprising the following academics (in alphabetical order):

Reviewer's name	University or higher education institution
Professor Dennis Chan	The Chinese University of Hong Kong
Professor Steven Cheung	The Hong Kong University of Science and Technology
Dr Alice Chung	Hong Kong Shue Yan University
Dr Lisa Goh	The Hang Seng University of Hong Kong
Carmen Lam FCG HKFCG	Hong Kong Metropolitan University
Dr Bruce Li FCG HKFCG(PE)	The Hong Kong Polytechnic University
Dr Raymond Wong	City University of Hong Kong
Tommy Wong	Caritas Institute of Higher Education
Dr Lynn Wang	The University of Hong Kong
Dr Davy Wu	Hong Kong Baptist University
Professor Harry Wu	Lingnan University

The six finalist teams were announced in mid-August 2023. These teams will be invited to present their papers on Saturday 16 September 2023 to compete for the Best Presentation Award and Audience's Favourite Team Award. Members, graduates and students who are interested in observing the presentation competition are welcome to attend.

<b>Theme</b>	Climate change disclosures – is the world too focused on this topic?
<b>Date</b>	Saturday 16 September 2023
<b>Time</b>	10.00am-1.00pm
<b>Fee</b>	Free of charge
<b>Venue</b>	Webinar session; no physical attendance is required.
<b>CPD points</b>	2

For details of the competition, please visit the Corporate Governance Paper Competition and Presentation Awards page under the Student Promotion & Activities subpage of the News & Events section of the Institute's website: [www.hkcgj.org.hk](http://www.hkcgj.org.hk).



## June 2023 examination diet

The examination results of the June 2023 diet were released on 15 August 2023. Candidates can access their examination results from their accounts on the Institute's website. The examination papers, mark schemes and examiners' reports are also available to download from the Login area of the Institute's website.

*For details of the CGQP examinations, please visit the Examinations page under the Chartered Governance Qualifying Programme subpage of the Studentship section of the Institute's website: [www.hkcgj.org.hk](http://www.hkcgj.org.hk).*

*For enquiries, please contact the Qualifications and Assessments Section: (852) 2830 6010, or email: [exam@hkcgj.org.hk](mailto:exam@hkcgj.org.hk).*

## November 2023 examination diet timetable

The November 2023 examination diet of the CGQP opened for enrolment on 24 July 2023, with a cut-off date of 31 August 2023. All examination enrolments must be made online via the Login area of the Institute's website.

### Week one

Date/Time	20 November Monday	21 November Tuesday	22 November Wednesday	23 November Thursday
9.15am-12.30pm*	Hong Kong Taxation	Hong Kong Company Law	Interpreting Financial and Accounting Information	Corporate Secretaryship and Compliance

### Week two

Date/Time	27 November Monday	28 November Tuesday	29 November Wednesday	30 November Thursday
9.15am-12.30pm*	Corporate Governance	Risk Management	Strategic Management	Boardroom Dynamics

\* Including 15 minutes reading time (9.15am-9.30am).

The Institute reserves the right to change the dates and details without prior notice.

*For enquiries, please contact the Qualifications and Assessments Section: (852) 2830 6010, or email: [exam@hkcgj.org.hk](mailto:exam@hkcgj.org.hk).*

## Chartered Governance Qualifying Programme (CGQP) (continued)

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### Learning support

The Institute provides a variety of learning support services for students to assist them with preparing for the CGQP examinations.

#### HKU SPACE CGQP Examination Preparatory Programme – autumn 2023 intake

HKU SPACE has been endorsed by the Institute to organise the CGQP Examination Preparatory Programme, which helps students to prepare for the CGQP examinations. One assignment and one take-home mock examination will be provided to students. There are 36 contact hours for each module, except for Hong Kong Company Law, which has 45 contact hours.

*For details, please contact HKU SPACE: (852) 2867 8485, or email: [hkcgi@hkuspace.hku.hk](mailto:hkcgi@hkuspace.hku.hk).*

#### Examination technique online workshops and student seminars

Video-recorded examination technique online workshops and student seminars are available for subscription to assist with preparing for the CGQP examinations.

*For details, please visit the Online Learning Video Subscription page under the Learning Support subpage of the Studentship section of the Institute's website: [www.hkcgi.org.hk](http://www.hkcgi.org.hk).*

*For enquiries, please contact the Qualifications and Assessments Section: (852) 2830 6010, or email: [exam@hkcgi.org.hk](mailto:exam@hkcgi.org.hk).*

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### Video-recorded Student Gatherings

Video-recorded Student Gatherings are available in the Student Gathering page under the Learning Support subpage of the Studentship section of the Institute's website: [www.hkcgi.org.hk](http://www.hkcgi.org.hk).

Student Gathering (1st session): getting started with the CGQP examinations – from planning to success

Student Gathering (2nd session): sharing from outstanding students in the CGQP examinations

Student Gathering (3rd session): preparing for and passing professional examinations – with flying colours!

Student Gathering (4th session): preparing for and passing professional examinations – Risk Management

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### Studentship renewal for the financial year 2023/2024

The renewal notice for the financial year 2023/2024 was sent to all students to the email address registered with the Institute in early July 2023. Students should settle the payment as soon as possible, but no later than Saturday 30 September 2023.

All students are highly encouraged to pay their renewal fee directly online. Please ensure that you settle your renewal fee by the deadline, as failure to do so will result in the removal of studentship from the student register.

*For enquiries, please contact the Studentship Registration Section: (852) 2881 6177, or email: [student\\_reg@hkcgi.org.hk](mailto:student_reg@hkcgi.org.hk).*

## Studentship activities: June 2023

**7 June**  
**Governance**  
**Professionals**  
**Information Session**  
**(Putonghua session)**



**10 June**  
**Governance**  
**Professional Mentorship**  
**Programme and Student**  
**Ambassadors Programme**  
**networking event**



## Forthcoming studentship activities

Date	Time	Event
6 September 2023	7.00pm–8.00pm	Student Gathering (6th session) – sharing from outstanding students in the CGQP examinations
16 September 2023	10.00am–1.00pm	Corporate Governance Paper Competition and Presentation Awards 2023
26 September 2023	1.00pm–2.00pm	Governance Professionals Information Session (Cantonese session)

For details of forthcoming studentship activities, please visit the Events section of the Institute's website: [www.hkcgj.org.hk](http://www.hkcgj.org.hk).

## Notice

### Featured job openings

Company name	Position
A. S. Watson & Co Ltd	Temporary Company Secretarial Officer (Oct 2023 - Jan 2024)
Computershare	Assistant Manager, Governance Services
Computershare	Manager, Governance Services
Guangdong Investment Limited	Deputy General Manager of Company Secretarial Department
Hong Kong Exchanges and Clearing Ltd	Associate/Assistant Vice President, Secretarial Services (PRC team)
Hong Kong Red Cross	Manager (Governance Support)
The Hong Kong Chartered Governance Institute	Assistant Manager (Ref: QA2023-08)
The Hong Kong Chartered Governance Institute	Senior Officer/Officer, Marketing and Communications (Ref: MKT 2023-04)
The Hong Kong University of Science and Technology	Head (Communications, External Affairs & Development) (Job ID: 9081)
The Hong Kong University of Science and Technology	Senior Manager (3 positions) (Job ID: 9053)
The Hong Kong University of Science and Technology	Student Wellness Manager (Job ID: 9110)

For details of job openings, please visit the Job Openings for Governance Professionals section of the Institute's website: [www.hkcgj.org.hk](http://www.hkcgj.org.hk).

## Insider dealing – SFO update

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On 8 August 2023, the Securities and Futures Commission (SFC) published consultation conclusions on proposed amendments to enforcement-related provisions of the Securities and Futures Ordinance (SFO). The consultation began on 10 June 2022 and ended on 12 August 2022. The SFC received 27 written submissions, including from industry associations, law firms, professional bodies and individuals.

The SFC will proceed with the proposal to broaden the scope of the SFO's insider dealing provisions to cover:

- insider dealing perpetrated in Hong Kong with respect to securities listed on overseas stock markets or their derivatives, and
- insider dealing perpetrated outside Hong Kong, if it involves any securities listed on a recognised stock

market, that is, a stock market operated by The Stock Exchange of Hong Kong Ltd, or their derivatives.

The industry will have the opportunity to review the draft amendments during the legislative process. Considering the complex implementation issues raised by the respondents to the consultation, the SFC concluded that, pending further review, it will put on hold the other two proposed amendments, which concern the professional investor exemptions and injunctions and other orders. However, the SFC will continue to monitor market developments and consider a full range of options to ensure investors are adequately protected. Such options may include enhancing the SFC's disciplinary powers and other parts of the legal and regulatory framework.

*More information is available on the SFC website: [www.sfc.hk](http://www.sfc.hk).*

## Hong Kong Listing Rules update

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### Rule amendments relating to Mainland issuers

Listing Rule amendments made by Hong Kong Exchanges and Clearing Ltd (HKEX) following the Mainland regulation updates took effect on 1 August 2023. The rule amendments reflect recent changes in the Mainland's regulatory framework for Mainland issuers and other proposed rule amendments relating to Mainland issuers. They also build on the Listing Rule reforms of 2021, enhancing and streamlining the listing regime for overseas issuers.

### Expansion of Hong Kong's paperless listing regime

HKEX proposals to expand Hong Kong's paperless listing regime are to take effect, with transitional arrangements, on 31 December 2023. The key changes to the Listing Rules include:

- the reduction in the number of submission documents and mandatory submission by electronic means

- the mandatory electronic dissemination of corporate communications by listed issuers to the extent permitted by the laws and regulations, and
- the simplification of the appendices to the Listing Rules.

The transitional arrangements for certain issuers are set out in the conclusions to the HKEX consultation – Proposals to Expand the Paperless Listing Regime and Other Rule Amendments – published on 30 June 2023 and available on the HKEX website. Minor and housekeeping amendments to the Listing Rules, as set out in the Consultation Conclusions, have already come into effect.

*More information is available on the HKEX website: [www.hkex.com.hk](http://www.hkex.com.hk).*



## SFC issues warning on virtual asset trading platforms

On 7 August 2023, following the detection of improper practices by some unlicensed virtual asset trading platforms (VATPs), the SFC issued a press release reminding investors to be wary of the risks of trading virtual assets on unregulated VATPs. The SFC also warned VATPs of the potential legal and regulatory consequences of these improper practices.

### Falsely claiming to have submitted an application to the SFC

Some of the unlicensed VATPs had claimed to have submitted licence applications to the SFC when in fact they had not done so. The SFC press release points out that these untrue and misleading claims could give the public a false sense of assurance that the VATP is in compliance with the SFC's regulatory requirements.

It is an offence for any person to make a fraudulent or reckless misrepresentation for the purpose of inducing another person to trade in virtual assets. Under Section 53ZRG of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO), a person commits an offence if the person makes any fraudulent misrepresentation or reckless misrepresentation for the purpose of inducing another person to enter into, or offer to enter into, an agreement to acquire, dispose of, subscribe for or underwrite any virtual assets. A person who commits this offence is liable:

- on conviction on indictment to a fine of \$1,000,000 and to imprisonment for seven years, or
- on summary conviction to a fine at level 6 and to imprisonment for six months.

'The SFC will take into account any misrepresentation made by an unlicensed VATP in considering its fitness and properness to be licensed should it eventually submit licence applications to the SFC,' the press release states.

### VATPs that do not comply with the SFC's requirements

The transitional arrangements under the new regime to regulate virtual asset service providers were designed to provide reasonably sufficient time for VATPs that provided virtual asset services in Hong Kong before 1 June 2023

to prepare for compliance with the legal and regulatory requirements applicable to licensed VATPs.

Under the AMLO, any person who carries on a business of providing a virtual asset service (that is, operating a virtual asset exchange) in Hong Kong, or holds itself, himself or herself out as carrying on such a business, is required to apply for a licence from the SFC. VATPs providing a virtual asset service in Hong Kong before 1 June 2023 are permitted to continue to provide such services in Hong Kong from 1 June 2023 to 31 May 2024 (that is, within the first 12 months from 1 June 2023) without being in breach of the licensing requirements under the AMLO by virtue of the non-contravention arrangement.

VATPs that consider themselves eligible for deeming under the transitional arrangements are reminded that the SFC may decide that deeming is inapplicable if it does not see a reasonable prospect for the VATPs to successfully show that they are capable of complying with the applicable legal and regulatory requirements.

### Unlicensed VATPs' established entities operating in Hong Kong

The SFC also reminds unlicensed VATPs that, in addition to new entities set up in anticipation of the transitional arrangements, any other established entities of unlicensed VATPs that are operating a business in Hong Kong of providing virtual asset services will also be subject to the new virtual asset service provider regime. These established entities will also need to apply for SFC licences, or they should proceed to close their business in Hong Kong. Conducting unlicensed activities in Hong Kong is a criminal offence.

*More information is available on the SFC website: [www.sfc.hk](http://www.sfc.hk).*

## New guidance on data breach handling and data breach notifications

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The Office of the Privacy Commissioner for Personal Data (PCPD) has issued new guidance on data breach handling and data breach notifications. To safeguard data security, the guidance recommends that organisations should formulate a data breach response plan to enable them to respond to data breach incidents promptly and to manage them effectively. It also provides a clear step-by-step guide to assist organisations in handling and managing data breach incidents properly, with a view to minimising the impact on the affected individuals, as well as the potential damage to the organisations.

Specifically, the guidance recommends that organisations should follow the following five steps when handling a data breach:

1. immediate gathering of essential information
2. containing the data breach
3. assessing the risk of harm

4. considering giving data breach notifications, and
5. documenting the breach.

The guidance also points out that organisations should notify the PCPD and the affected data subjects as soon as practicable after becoming aware of the data breach, particularly if the data breach is likely to result in a real risk of harm to those affected data subjects.

Separately, the PCPD has launched an e-Data Breach Notification Form. The online form is a web-based form with guided questions and multiple-choice answers which enables organisations to grasp the details of data breach incidents more comprehensively and effectively, and report data breach incidents to the PCPD in a more convenient manner.

*The new guidance – Data Breach Handling and Data Breach Notifications – is available on the PCPD website: [www.pcpd.org.hk](http://www.pcpd.org.hk)*

## SFC and AFRC join forces to combat misconduct by listed issuers

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On 13 July 2023, the SFC and the Accounting and Financial Reporting Council (AFRC) issued their first joint statement as part of their enhanced collaboration in the regulation of the securities and futures markets in Hong Kong.

The joint statement addresses an observable increase in cases of listed issuers channelling a company's funds to third parties in dubious circumstances under the pretext of loans. These loans were often approved or granted without sufficient commercial rationale and appropriate documentation, and in some cases without adequate risk assessments, due diligence or internal controls. Listed issuers suffered significant losses when loans were not repaid.

The statement includes the SFC's and AFRC's observations on listed issuers granting dubious loans. It also sets out the conduct standards and practices that listed issuers, their directors, audit committees and auditors should adhere to in relation to loans and similar arrangements.

*More information is available on the SFC and AFRC websites: [www.sfc.hk](http://www.sfc.hk) and [www.afrc.org.hk](http://www.afrc.org.hk). See this month's In Focus article on page 20 for further analysis.*



# HKCGI



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Liquidation - Case Study of Wholly  
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